

REMARKS

This application has been amended by rewriting claims 4, 8 and 12. Claims 1-17 remain in the application for reconsideration.

The Examiner objected to claims 4-6 and 8-17 as being dependent upon a rejected based claim, but indicated that these claims would be allowable if rewritten in independent form. Claims 4, 8 and 12 have been rewritten in independent form, including all of the limitations of the base claim and any intervening claims, and are therefore believed allowable. Claims 5-6, 9-11 and 13-17 depend from one of independent claims 4, 8 or 12, and are therefore also believed allowable.

The Examiner rejected claims 1, 2, 3, and 7 under 35 USC 102(b) as being anticipated by Ekvall (US Pat No. 1,726,657). This rejection is respectfully traversed.

While applicants agree that Ekvall discloses several of the claim limitations of the rejected claims, it is believed that there are a number of structural features of the rejected claims that are neither present, nor obvious in view of, the cited reference.

It is first noted that the preamble of claim 1 calls for a dual conveyor track. While Ekvall discloses two parallel conveyor tracks, it clearly is not a dual conveyor track of the type referred to in the preamble of claim 1. Rather, Ekvall discloses two conveyor tracks that operate in the same direction, but with the downstream end of the first track placed adjacent the upstream end of the

second track. Thus, the two conveyors do not operate adjacent one another along their lengths, and cannot be considered a dual conveyor track.

Of more importance is the fact that Ekvall does not disclose a number of the specific structural features recited in claim 1. For example, claim 1 calls for a shuttle that is operable among a first "hold" position, a first "release" position and a second "release" position. While the Ekvall reference may be construed to include the first "hold" position and the second "release" position, there is no interpretation of the claims or the Ekvall reference that discloses the required first "release" position.

As recited in claim 1, and described in the specification, the first release position calls for the shuttle to be located so that a specimen carrier "bypasses the first stop member and is moved downstream through the shuttle arms on the first conveyor" [emphasis added]. Because the transfer apparatus is designed for use on a dual conveyor track (which is recited in the preamble), there are two possible "release" positions available: (1) along the second track (shifted off of the first track), or (2) along the first track (for continued travel on the first track downstream of the transfer apparatus). Ekvall neither discloses or suggests such structure.

Ekvall cannot disclose two different release positions, because the shuttle can only move the "specimen carrier" from the downstream end of one conveyor to the upstream end of a second conveyor. It is therefore clear that claim 1 is neither anticipated by, nor obvious in view of, the Ekvall reference. Claim 1 is therefore believed allowable without amendment.

Claim 2 is also believed allowable over the cited reference. Claim 2 calls for the shuttle to be operable to a second "hold" position with the shuttle arms located such that a specimen carrier is "in contact with the second stop member to thereby prevent downstream movement of a carrier on the second conveyor." Ekvall neither discloses nor suggests such structure.

The Examiner asserts that a second stop member is shown in Figure 3. However, the applicant does not believe that the requisite structure is shown. The only structure shown in Figure 3 that "projects partially over the second conveyor" (as required by claim 1), is the "Z-shaped" member at the upstream end of the 2nd conveyor, upstream of the location where the bottles are moved onto the conveyor. If this is the structure that the Examiner asserts as the 2nd stop member, then it is impossible for that structure to "prevent downstream movement" of the bottle, as required by claim 2. The structure is on the wrong side of the bottle to achieve the "stopping" required by the claims. It is therefore believed that claim 2 is neither anticipated by, nor obvious in view of, the Ekvall reference. Claim 2 is therefore believed allowable without amendment.

Claims 3 and 7 depend from claim 2, and are believed allowable, since claims 1 and 2 are believed allowable.

Because the claims have been amended to include an additional independent claim beyond the three originally paid for, a fee transmittal form and appropriate fee for this additional claim is enclosed herewith.

For the reasons above, it is believed that this application is now in condition for allowance. Reconsideration of the rejections is respectfully requested.

Respectfully submitted,



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CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that the original AMENDMENT for application Ser. No. 10/626,466 to DOUGLAS BARRY ET AL. enclosed herewith, is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

MAIL STOP AMENDMENT
COMMISSIONER FOR PATENTS
PO BOX 1450
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on this 24th day of March, 2005.


Mark Frederiksen